

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re Impinj, Inc. Securities Litigation.

CASE NO.: 3:18-CV-05704-RSL

**DEFENDANTS' REPLY IN SUPPORT
OF NOTICE OF INCORPORATION
BY REFERENCE**

NOTE ON MOTION CALENDAR:
May 3, 2019

ORAL ARGUMENT REQUESTED

Impinj, Inc. (“Impinj” or the “Company”), Chris Diorio, Evan Fein, and Eric Brodersen (“Individual Defendants,” collectively with the Company “Defendants”) present this Reply in support of their Notice of Incorporation by Reference (“Notice”), ECF No. 41-1 Ex. C.

I. PLAINTIFF CONCEDES THAT DEFENDANTS’ EXHIBITS ARE INCORPORATED BY REFERENCE

A document is incorporated by reference if (1) the complaint “refers extensively to the document”; or (2) “the document forms the basis of the plaintiff’s claim.” *Khoja v. Orexigen Therapeutics*, 899 F.3d 988, 1002 (9th Cir. 2018) (quoting *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003), *petition for cert. filed sub nom., Hagan v. Khoja*, No. 18-1010 (9th Cir. Jan. 31, 2019)). The Opposition to the Notice (“Opposition”) does not argue that even one of Defendants’ exhibits fails to fulfill either condition. ECF No. 53 at 1–4. In fact, Plaintiff expressly “does not object” to the Court’s considering the exhibits. *Id.* at 4. Because Plaintiff offers no contrary argument, Defendants’ documents are incorporated by reference, and therefore are “part of the complaint” for purposes of Defendants’ motion to dismiss (“Motion”).¹ *Orexigen*, 899 F.3d at 1002.

II. PLAINTIFF’S OPPOSITION IS AN IMPROPER END-RUN AROUND THE PAGE LIMITS APPLYING TO THE MOTION TO DISMISS

Defendants’ Notice explains why the proffered exhibits are incorporated by reference; it does not discuss the inferences to draw from the exhibits, nor the merits of the Motion in general. Notice at 1–8. Rather than address the arguments in the Notice, the Opposition instead addresses Defendants’ arguments made in the Motion. ECF No. 53 at 1–4. The Court should reject Plaintiff’s attempt to skirt the page limits applicable to its Opposition to the Motion, and disregard the arguments in Plaintiff’s purported Opposition to the Notice. *See* LCR 7(e)(3) (twenty-four-page limit for opposition to motion to dismiss); *Kitazi v. Sellen Constr. Co.*, 2017 WL 5455372, at *2 (W.D. Wash. Nov. 14, 2017) (striking exhibit containing “factual assertions

¹ Defendants oppose Plaintiff’s request to convert the Motion to one for summary judgment.

1 and legal arguments” that “should have been included” in opposition brief).

2 **CONCLUSION**

3 Defendants respectfully request that the Court deem the exhibits to the Declaration of
4 Gregory L. Watts in Support of Defendants’ Motion to Dismiss incorporated by reference.

5 Dated: April 30, 2019

6 s/ Barry M. Kaplan

Barry M. Kaplan, WSBA #8661

Gregory L. Watts, WSBA #43995

Stephanie L. Jensen, WSBA #42042

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14 *Attorneys for Defendants Impinj, Inc., Chris*
15 *Diorio, Evan Fein, and Eric Brodersen*

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2019, I filed the foregoing with the Clerk of the Court using the CM/ECF system, and served all parties via ECF.

Dated: April 30, 2019

s/ Barry M. Kaplan

Barry M. Kaplan, WSBA #8661